150 N. Y. 37, 41, 44 N. E. 718, 719. Since the requisite control in bankruptcy is power to pass the benefit of the claim from the defendant to a third person, it would seem that jurisdiction over both defendant and debtor is necessary; or at least over the debtor and the place of payment. See BEALE, CASES ON CONFLICTS OF LAWS, SUMMARY, § 38. In the analogous case of garnishment, a few cases have recognized this. *Louisville & Nashville R. Co.* v. *Nash*, 118 Ala. 477, 23 So. 825; *Sawyer* v. *Thompson*, 24 N. H. 510. See BROWN, JURISDICTION, 2 ed., § 150; *cf. Comm. Nat. Bank* v. *Chicago, etc. Ry. Co.*, 45 Wis. 172. The great weight of authority, however, disregards this principle. *Cf. Chicago, etc. Ry. Co.* v. *Sturm*, 174 U. S. 710; *Swedish-American Nat. Bank* v. *Bleeker*, 72 Minn. 383, 75 N. W. 740; *Sexton* v. *Phœnix Ins. Co.*, 132 N. C. 1, 43 S. E. 479; *National Fire Ins. Co.* v. *Chambers*, 53 N. J. Eq. 468, 32 Atl. 663. The case of a bank deposit seems relatively clear, since the *situs* of the debtor and the place of payment necessarily concur. Accordingly, the debt has been held to exist at the *situs* of the bank. *McBee* v. *Purcell Nat. Bank*, 1 Indian Terr. 288, 37 S. W. 55. Moreover, it seems that the courts are tending to adopt the mercantile conception of a bank deposit as the equivalent to cash. See *Blackstone* v. *Miller*, 188 U. S. 189, 205. *Matter of Houdayer*, 150 N. Y. 37, 40, 44 N. E. 718, 719. See 24 HARV. L. REV. 586. Upon sound principle, therefore, as well as upon the spirit of the Bankruptcy Act, which calls for distribution of the property of an insolvent wherever it is practically available, the result reached by the court in the present case is a desirable one.

BANKRUPTCY — PREFERENCES — EFFECT OF ENFORCEMENT OF TRANSFER. — Within four months before the filing of a petition in bankruptcy, an insolvent debtor paid in full a personal creditor who had actual knowledge of the debtor's circumstances. Though liable for certain partnership debts, the insolvent then had no other individual debts outstanding. However, by the time the petition was filed there were other individual creditors, who could not be paid in full. The trustee seeks to avoid the transfer as a preference. *Held*, that the transfer may be set aside. *Rubenstein* v. *Lottow*, 111 N. E. 973 (Mass.).

Since a preference includes only transfers giving one creditor an advantage over other "creditors of the same class," no preference was effected at the time of the transfer, for partnership creditors and individual creditors are not "creditors of the same class." See BANKRUPTCY ACT OF 1898, §§ 60 *a*, 5 *f*; *Mills* v. *J. H. Fisher & Co.*, 159 Fed. 897, 900; *In re Denning*, 114 Fed. 219, 221; *cf. Swarts* v. *Fourth National Bank*, 117 Fed. 1, 6. The principal case therefore decides squarely that if the enforcement of the transfer effects a preference as of the date of the petition, it may be set aside. This seems to be the natural inference from the requirement in section 60 *a*, that a transfer made by an insolvent debtor within four months of bankruptcy shall be deemed to be a preference if "the effect of the enforcement of such . . . transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class." But this is difficult to reconcile with the provision in section 60 *b*, that a transfer shall be voidable if (*inter alia*) "at the time of the transfer . . . the . . . transfer then operate as a preference." However, by treating the word "preference" as strictly relative to the definition in section 60 *a*, it is possible to construe section 60 *b* as making voidable only transfers which when given operate to produce a situation that at the time of bankruptcy will give one creditor an advantage over others. This construction is in harmony with the general policy of the bankruptcy act to determine all questions in so far as possible with reference to the conditions existing when the petition is filed. *Cf. Bailey* v. *Baker Ice Machine Co.*, 36 Sup. Ct. 50, 54; *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 307. Any other construction would involve the great practical difficulty of computing of percentages at the date of every transfer within the four months' period. It would also lead

to inequality of distribution, thus violating one of the fundamental objects of the bankruptcy law. See *Swarts* v. *Fourth National Bank*, *supra*, 3; *In re Leslie*, 119 Fed. 406, 410. See J. M. Olmstead, "Bankruptcy a Commercial Regulation," 15 HARV. L. REV. 829, 834, 843.

BANKRUPTCY — PROVABLE CLAIMS — CLAIMS UNDER EXECUTORY CONTRACTS. — A hotel entered into a five-year contract granting to a transfer company, in consideration of a certain monthly sum, its exclusive baggage and livery privilege. Soon after, the transfer company was put into involuntary bankruptcy, and the hotel now claims to prove for damages against the estate. *Held*, that proof of the claim be allowed. *Central Trust Co.* v. *Chicago Auditorium Association*, Sup. Ct. Off. Nos. 162, 174.

For comment upon this case when it was before the Circuit Court of Appeals, see 27 HARV. L. REV. 469. It was there contended that if claims under executory bilateral contracts are to be held provable on a satisfactory basis, it must be on the ground that contingent claims, if capable of liquidation, should be allowed proof under the present act. The Supreme Court, in affirming the decision of the Circuit Court of Appeals upon this point, goes solely upon the ground that proceedings, whether voluntary or involuntary, resulting in an adjudication of bankruptcy, are the equivalent of an anticipatory breach of an executory agreement, and that the claim for damages by reason of such a breach is founded upon a contract, within the meaning of § 63 *a* (4) of the Bankruptcy Act of 1898.

BILLS AND NOTES — DAMAGES — DEPRECIATION OF GERMAN MARKS FOR WHICH BILL OF EXCHANGE IS DRAWN. — The defendant accepted bills of exchange payable in marks at Leipzig, Germany. The payee brings an action in New York on the bills. *Held*, that the recovery should be of a sum sufficient to have purchased the named sum of marks as depreciated at the time of default. *Gross* v. *Mendel*, 157 N. Y. Supp. 357 (App. Div.).

Intrinsic differences of money value, whether due to differences in standard or to excessive paper issues, should of course be taken account of in fixing the amount to be recovered on a debt due in foreign currency. *Bissell* v. *Heyward*, 96 U. S. 580; *Comstock* v. *Smith*, 20 Mich. 338. And it is now tolerably clear that when the debt is due abroad, the loss or gain of exchange should also be taken into account, at least when a bill of exchange is the foundation of the action. *Scott* v. *Bevan*, 2 B. & Ad. 78. See *Grant* v. *Healey*, 3 Sumner (U. S. Circ. Ct.) 523, 524; *Weed* v. *Miller*, 1 McLean (U. S. Circ. Ct.) 423. *Contra*, *Chumasero* v. *Gilbert*, 24 Ill. 651. *Cf. Adams* v. *Cordis*, 25 Mass. 260. Accordingly, the current rate of exchange, which expresses the resultant of these factors, is properly applied to determine the sum due. It remains to choose between the rate at the time of default and at the time of trial. That choice depends in theory on the decision of a question that has divided the masters of the law of contracts. If, on default, a right to damages is substituted for the debt, the principal case is correct, since it gives the creditor a sum which would exactly purchase the named sum of marks when they were due. *Bissell* v. *Heyward*, *supra*. However, if the debt continues and it is that which is recovered, the rate of exchange at the time of trial would seem to be determinative. *Taan* v. *Le Gaux*, 1 Yeates (Pa.) 204; *Lee* v. *Wilcocks*, 5 Serg. & Rawle (Pa.) 48. See *Hawes* v. *Woodcock*, 26 Wis. 629, 635. It might not be unreasonable to allow the plaintiff to recover on the rate most favorable to him within a reasonable time after the default, on an analogy to what is done on the conversion of pledged stocks, for he might have had to borrow or draw reëxchange to cover his necessities at any time within that period. *Cf. Dimock* v. *United States National Bank*, 55 N. J. L. 296, 25 Atl. 926.